

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1047 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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BAI BOORBHANU HAJI HASAN

Versus

BAI HAVABHAI HAJI HASAN  
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Appearance:

MS SK MANDAVIA for Petitioners  
MR RA MISHRA for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision : 24/03/2000

CAV JUDGEMENT

#. This revision application is directed by the defendant-petitioner against the order of the Civil

Judge, Una dated 24/6/1999 in Regular Civil Suit No.89/96 below Exh.148.

#. It is really shocking and surprising that the members of the Bar in the court have little care of the matters which are to be presented. Not only this even they do not bother to read the papers, before same are to be presented in the court. It is a duty of the members of the Bar to present each and every paper after they themselves read it so that there may be any chance of errors, omissions and mistakes. Some times very glaring mistakes are being noticed in the memo of the revisions, appeals and applications etc. This is a case where I find glaring mistake in the memo of revision application. The order is dated 24/6/99 which is impugned in this revision application is passed in favour of the plaintiff-respondent No.1. The application filed by the plaintiff-respondent No.1 for change of her power of Attorney holder and to record his statement was came to be granted under this order but contrary to it what the petitioner states that as if this application has been filed by the petitioner and the same has been rejected. Not only this in para No.2 of the memo of the revision application it is stated that the order was pronounced on 24/9/99, which is factually incorrect. Not only this otherwise also from this paragraph itself it is clear that what is stated is not correct. The learned Trial Court granted the stay against the impugned order up to 2/7/99. So if we go by this fact then it is difficult to accept that this order is pronounced on 24/9/99. From para No.2 it is also clear that under the order the application of the plaintiff-respondent came to be allowed and what he has stated that the application of the petitioner is rejected is not correct. It is expected of the counsel for the petitioner to be very careful and sincere in her duty which she owes to the court. In future such type of error, mistake and omission may not occur otherwise this court ought to have take a serious view of the same. It is unfortunate that for this inaction, omissions and mistakes which are being committed by the members of the Bar one day if it repeats the poor clients are to heavily suffer.

#. The learned counsel for the petitioner contended that the Power of Attorney holder is examined not as a witness of the plaintiff-respondent but as a plaintiff. He appeared as a plaintiff and if the statements given by him are not considered to be in favour of the plaintiff-petitioner it is not permissible for her to change the power of attorney only for the purpose of his examination. The learned counsel for the petitioner

contended that it is always open to the plaintiff-respondent to change power of attorney and he can proceed with the suit on her behalf but he cannot again be examined as the Power of Attorney of the plaintiff-respondent where earlier Power of Attorney holder has been examined and evidence has been closed. Lastly it is contended that if such a procedure has been followed, adopted and permitted by this court there will be no end to these matters and proceedings will not attain the finality.

#. Shri Mishra, learned counsel for the respondent in contra contended that the second power of attorney holder can be examined as a witness of the plaintiff. It has next been contended that the learned Trial Court has passed a just and reasonable order. Lastly, it is contended that the power of attorney holder is examined it will not cause any prejudice to the petitioner.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. The learned Trial Court has committed a serious illegality in exercise of its jurisdiction in passing the impugned order and it is a fit case which calls for interference of this court. If the impugned order is allowed to stand will certainly occasion a failure of justice and irreparable injury will be caused to the petitioner as the plaintiff has already completed his evidence and the court has not desirous of his re-examination. It has to be stated that the plaintiff herself has not appeared in the witness box. Once the power of attorney holder is examined by the plaintiff for herself at a later point of time merely because he has not supported the plaintiffs case or his statements have been demolished by the cross-examination by the defendant he or she cannot be permitted to change the power of attorney holder to be examined again. This aspect of the case has not been considered by the court below. It is the right of the plaintiff-respondent to change power of attorney holder and he may proceed in the matter but he cannot be again examined as a plaintiff-power of attorney holder. However, it is open to the plaintiffs-respondents to produce that person as her witness but that does not she wants to do. This procedure if what has been permitted to be adopted then there will be no end to the proceedings. The plaintiff cannot be examined again and again in the matter. The Trial Court has not correctly understood and appreciated the law and provisions of Code of Civil Procedure.

#. It is an attempt on the part of the plaintiff to overcome the lacuna which remains in her case. If this course is permitted the very purpose and object of right of cross-examination will be defeated. It will afford an opportunity to the plaintiff in case concocted and manufactured evidence is produced. Certainly if the impugned order is allowed to stand it will occasion failure of justice to the petitioner.

#. In the result, this revision application succeeds and the same is allowed and the order of the Civil Judge (J.D.), Una dated 24/6/99 passed in Civil Suit No.89/96 below Exh.148 is quashed and set aside. Rule is made absolute. The respondent No.1 is directed to pay cost of this revision application to the petitioner.

(S.K.Keshote, J.)

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